

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al*,

Debtors.¹

PROMESA
TITLE III

No. 17-BK-03283 (LTS)

(Jointly Administered)

**URGENT MOTION OF THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO, ACTING THROUGH ITS SPECIAL CLAIMS
COMMITTEE, FOR ENTRY OF AN ORDER AUTHORIZING THE FILING
OF THE KEY TO PSEUDONYMOUS DEFENDANTS UNDER SEAL**

To the Honorable United States Magistrate Judge Judith G. Dein:

The Financial Oversight and Management Board for Puerto Rico, acting through its Special Claims Committee (the “SCC”), respectfully submits this urgent motion (the “Motion”) seeking the entry of an order authorizing the filing of the confidential list of third party claims under seal.² In support of the Motion, the SCC respectfully states as follows:

¹ The Debtors in these Title III cases, along with each Debtor’s respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK- 3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481), (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566 (LTS)) (Last Four Digits of Federal Tax ID: 9686), (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808), (iv) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-BK-4780) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523 (LTS)) (Last Four Digits of Federal Tax ID: 3801).

² On November 4, 2019, the Court entered an Order directing that the Debtors file an updated pseudonym key and provide an excel version of the updated pseudonym key to the Puerto Rico Clerk’s Office. The Court further ordered that the Debtors file an updated pseudonym key, and provide an excel version of such pseudonym key to the Puerto Rico Clerk’s Office each time any complaint is amended that includes pseudonym defendants. *See* ECF No. 9105

JURISDICTION

1. The United States District Court for the District of Puerto Rico (the “Court”) has subject matter jurisdiction over this matter pursuant to section 306(a) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”).³
2. Venue is proper pursuant to PROMESA § 307(a).

BACKGROUND

3. The SCC, together with the Official Committee of Unsecured Creditors of All Title III Debtors (Other than COFINA), has commenced a number of adversary proceedings that are Challenged Bonds Avoidance Actions as defined in previous pleadings and orders of the court. *See, e.g.*, ECF No. 6143, para. 16 (SCC urgent motion defining Challenged Bonds Avoidance Actions and seeking discovery in furtherance thereof). In order to identify appropriate defendants for these actions, the SCC has obtained information from financial institutions on condition that such information, which identifies such institutions’ clients and their financial holdings and transactions, remains confidential. *See* ECF Nos. 6493, 6967. Accordingly and pursuant to a court-ordered agreement, the SCC has filed certain Challenged Bonds Avoidance Actions against defendants identified by pseudonym.⁴

4. In its orders entered at ECF No. 6967, the Court ordered that the SCC (a “Receiving Party” in receipt of “Confidential Information” as defined therein) “file with the Court a “key”[FN] list matching pseudonyms to actual names.” Para. 10(b); *see also* ECF No. 6493 (similar requirement in order granting related motion); *see also* ECF No. 9105. In its footnote, and in accordance with its prior order on confidentiality at ECF No. 6493, the Court

³ PROMESA has been codified at 48 U.S.C. §§ 2101-2241.

⁴ The Challenged Bonds Avoidance Actions filed to date that identify defendants by pseudonym are: 19-00284-LTS, 19-00285-LTS, 19-00286-LTS, 19-00287-LTS, 19-00288-LTS, 19-00358-LTS, 19-00359-LTS and 19-00361-LTS.

noted that the key would be filed under seal and that “the parties must file a motion to seal prior to filing the “key.” ” Para. 10(b), fn. 11.

5. The document to be filed pursuant to this Motion (the “Key”) is the document referenced in the Court’s prior orders, and matches pseudonyms to real names for all defendants to all Challenged Bonds Avoidance Actions filed to date. *See* ECF No. 6493, para. 3(b) (“the Receiving Party shall...file with the Court under seal a “key” list matching pseudonyms to actual names...the Receiving Party may file under seal a single “key” matching pseudonyms to actual names of all defendants to all Challenged Bond Avoidance Actions commenced by such Receiving Party”).

REQUESTED RELIEF

6. The SCC seeks authority, pursuant to Bankruptcy Code Sections 105(a) and 107(b), and Bankruptcy Rule 9018, to file the Third Party Claims List under seal as directed by the Court.

BASIS FOR REQUESTED RELIEF

7. Despite the public’s common law right of access to judicial proceedings and records, the Bankruptcy Code requires courts, when appropriate, to limit the public’s access to sensitive information. Section 107(b) of the Bankruptcy Code provides, in relevant part, that:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may –

- (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or
- (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

11 U.S.C. § 107(b).

8. In addition, section 105(a) of the Bankruptcy Code permits the court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

9. Bankruptcy Rule 9018, which implements the protections provided by Section 107, sets forth the procedure by which a party in interest may obtain a protective order authorizing the filing of a document under seal. This rule reads in relevant part:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information

Fed. R. Bankr. P. 9018.

10. In this instance, the Court has required the SCC to file the Key under seal. ECF No. 6493, para. 3(b) (“the Receiving Party shall...file with the Court under seal a “key” list matching pseudonyms to actual names”).

CONCLUSION

WHEREFORE, the SCC seeks the entry of an Order, substantially in the form attached hereto as Exhibit A, authorizing the SCC to file the Third Party Claims List under seal, and granting such relief as the Court deems just and proper under the circumstances.

Dated: November 7, 2019

/s/ Edward S. Weisfelner

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Exhibit A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al*,
Debtors.⁵

PROMESA
TITLE III

No. 17-BK-03283 (LTS)

(Jointly Administered)

**[PROPOSED] ORDER AUTHORIZING THE FILING OF THE KEY TO
PSEUDONYMOUS DEFENDANTS UNDER SEAL**

Upon the urgent motion dated November __, 2019 (the “Motion”)⁶ of the Oversight Board, acting through its Special Claims Committee, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, and Bankruptcy Rule 9018, made applicable to this proceeding by section 301(a) of the Puerto Rico Opportunity Management and Economic Stability Act of 2016 (“PROMESA”), 48 U.S.C. § 2161(a); and the Court having jurisdiction over this matter under 28 U.S.C. 1331, and under section 306(a)-(b) of PROMESA, 48 U.S.C. §2166(a)-(b); and venue being proper under section 307(a) of PROMESA, 48 U.S.C. § 2167(a); and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need

⁵ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (iv) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) Last Four Digits of Federal Tax ID: 3808); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

⁶ Capitalized terms not defined in this Order shall have the meanings ascribed to them in the Motion.

be provided; and the Court having reviewed the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that this Motion is granted; and it is further

ORDERED that the Key shall be filed under seal.

Dated: _____, 2019

Honorable Magistrate Judge Judith G. Dein

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